



N. A. SHAH ADVISORS LLP

BULLETIN

CAPITAL MARKETS BULLETIN – JULY 2023



EXECUTIVE SUMMARY

- ◆ SEBI has brought in changes in relation to senior management, sale or disposal of undertaking without scheme of arrangement, material events and agreements billings listed entities.
- ◆ Introduction of Corporate Debt Market Development Fund, launching of liquidation scheme, in-specie distribution of unliquidated investments and valuation of investment portfolio of AIFs are various amendments in relation to AIFs.
- ◆ Formats for submission of compliance reports and various methods for achieving minimum public unitholding of InvITs and REITs has been provided by SEBI.

AMENDMENTS IN LODR REGULATIONS

◆ **Senior Management:**

- Vacancy in the office of MD, CEO, CFO, WTD, Director, Manager and Compliance Officer shall be filled by the Company within 3 months.
- The continuation of a director in a listed entity shall be as follows:

Timeline	Approval
Till 31 st March 2024	By the shareholders in the first general meeting after 31 st March 2024
From 01 st April 2024	By the shareholders at least once in every 5 years

The above condition is not applicable to:

- Directors appointed by court or tribunal
- Reappointment of directors liable to retire by rotation
- Nominee directors

◆ **Sale or disposal of undertaking without scheme of arrangement:**

- On sale, lease or disposal of whole or substantially whole of any undertaking of the listed entity, a special resolution is required to be passed by the shareholders, and majority of the public shareholders are required to vote in favour of such resolution.
- The aforesaid is not applicable in case of sale, lease or disposal of an undertaking to the wholly owned subsidiary of the listed entity, subject to certain conditions.

◆ **Materiality of events / information:**

- The events/information shall be considered material if it exceeds the lower of the following criteria:
 - 2% of turnover as per the last audited consolidated financial statements
 - 2% of networth as per the last audited consolidated financial statements (except in case the net worth is negative)
 - 5% of average of absolute value of profit or loss after tax as per last three audited consolidated financial statements
- Any continuing events/ information which now qualifies as material as per the above thresholds, is to be disclosed within 30 days from the date of notification.
- All material events/information shall be disclosed to the stock exchange within the following timeline:
 - 30 minutes from closure of the board meeting;

- 12 hours from occurrence of event, if emanating from listed entity;
- 24 hours from occurrence of event, if not emanating from listed entity;
- Top 100 listed entities (w.e.f. 01st October 2023) and thereafter 250 listed entities (w.e.f. 01st April 2024) shall confirm, deny or clarify reported events or information in the mainstream media, if any, within 24 hours.
- The following events/information are required to be disclosed to the stock exchanges without any application of materiality guidelines:
 - Acquisitions by the listed entity, if the cost of acquisition exceeds the materiality threshold.
 - (a) Sale or disposal of whole or substantially whole of any undertaking or subsidiary or associate company of listed entity.
 - Fraud or financial defaults by a listed entity, its subsidiary, promoter, director, KMP, senior management, or arrest of the aforesaid individuals, in India or abroad.
 - Resignation of KMP, senior management, compliance officer or director (other than independent director) of the listed entity.
 - Unavailability of MD or CEO of the listed entity for more than 45 days in any rolling period of 90 days.
 - Announcement made by directors, promoters, KMP or senior management of a listed entity through mainstream media of any event/information which is material for the listed entity but is not yet available in the public domain by the listed entity.
 - Any action initiated or orders passed by any Authority against the listed entity, its directors, KMP, senior management, promoters or its subsidiary.
 - Voluntary revision of financial statements or board report.

◆ **Agreements binding listed entities:**

- All the shareholders, promoters, promoter group entities, directors, KMP, related parties, employees of the listed entity or of its holding, subsidiary or associated company, shall within 2 working days disclose to the listed entity about all the agreements entered into by them which may have an impact on or which imposes or creates liability on the listed entity and whether or not the listed entity is a party to such agreements.
- The listed entity shall in turn disseminate such information to the stock exchanges and disclose the details of the subsisting agreements in the annual report for the FY 22-23 and FY 23-24.

◆ **Other amendments:**

- Details of cyber security incidents or breaches or loss of data or documents shall be disclosed in quarterly compliance report on Corporate Governance.
- Any special rights granted to shareholders shall be approved by passing special resolution by the shareholders once in every 5 years. Any such special rights subsisting on the date of notification shall be approved within 5 years.
- Post listing, company shall submit quarterly or yearly financial statements of the immediate succeeding year within the specified timeline or within 21 days of listing, whichever is later.
- Listed entity carrying out sale, lease or disposal of any undertaking outside Scheme of Arrangement shall take prior approval of shareholders by passing special resolution.
- Intimation of investors meet on the listed entity's website shall be made at least 2 working days before the date of meet.

AMENDMENTS IN AIF REGULATIONS

◆ **Introduction of Corporate Debt Market Development Fund ("CDMD Fund"):**

- CDMD Fund shall be a new category of AIF:
 - Constituted in the form of Trust
 - A close ended fund with tenure of 15 years from its 1st closing
 - The units of which shall be offered to asset management companies and specified debt-oriented schemes of mutual funds and shall not be listed
- The manager or sponsor shall have a continuing interest of at least Rs. 5 crores.
- Investment conditions:
 - During market dislocation, CDMD Fund shall invest in listed corporate debt securities from specified debt-oriented schemes of mutual funds having a maximum residual tenure of 5 years and shall hold the same till maturity or sell in secondary market upon reversal of dislocation
 - Other than market dislocation, CDMD Fund shall invest in liquid and low-risk debt instruments
 - CDMD Fund shall not invest outside India.
 - Investment in any one investee company shall not exceed 5% of fund capital and the total investment in all the group companies shall not exceed 7.5% of fund capital, at the time of investment
 - The fund may borrow upto 10 times of its corpus
 - The net asset value and portfolio shall be available to unitholders on daily basis.

♦ **Launching of Liquidation scheme and in-specie distribution of unliquidated investments:**

- In order to provide flexibility to the AIFs to deal with investments which are not sold due to lack of liquidity (“Unliquidated Investments”) during the winding up process, SEBI has provided the following two options:

Particulars	Liquidation Scheme	In-specie distribution
Meaning	A close ended scheme launched for liquidating the Unliquidated Investments purchased from the expired original scheme	Distribution of Unliquidated Investments directly to the consenting investors in the original scheme
Consent	75% of investors in value	
Minimum bid	Minimum bid for 25% of the value of Unliquidated Investments shall be arranged which shall represent the units of consolidated value of each Unliquidated Investment	
Valuation	To be carried out by 2 independent valuers	
Disclosure	The bid value and the valuation shall be disclosed to all the investors in the original scheme	
Exit to dissenting investors of the original scheme	The dissenting investors shall be offered an option to fully exit the original scheme out of the 25% bid arranged by the AIF (excluding the bidder and its related parties who are investors in the original scheme)	
Sale / distribution	Subsequently, the Unliquidated Investments shall be sold to the liquidation scheme	Subsequently, the Unliquidated Investments shall be distributed in-specie
Reporting value to Benchmark agencies	<ul style="list-style-type: none"> ▪ Bid value, if the AIF arranges minimum bid ▪ One Rupee, if the AIF fails to arrange minimum 	
Consideration	Liquidation scheme shall allot units to the original scheme for purchasing Unliquidated Investments and further such units shall be distributed in-specie to consenting investors	-

Winding up	Upon launch of liquidation scheme, the original scheme shall be wound up prior to the expiry period of liquidation period	Upon in-specie distribution to the consenting investors, the original scheme shall be wound up prior to the expiry period of liquidation period
Tenure	Tenure of the scheme shall be from date of filing of PPM and shall not fall beyond the tenure of the original scheme	-

- Liquidation period means a period 1 year from the expiry of original scheme for liquidation.
- In the absence of requisite consent, the Unliquidated Investments to be compulsorily distributed to investors in specie at value of 1 Rupee. If the investor is not willing to take such investments then it shall be written off.

◆ **Valuation of Investment Portfolio of AIF:**

- Valuation of securities to be carried out as per the Mutual Fund Regulations, 1996. In cases covered in such regulations, valuation shall be as per guidelines endorsed by AIF Industry Association and the same shall be disclosed in PPM.
- Deviation of more than 20% between two consecutive valuations or more than 33% in a financial year, the manager shall specify the reasons for such deviation to the investors.
- The manager shall disclose the following as part of changes in PPM to SEBI and investors:
 - Changes in valuation methodology for each asset class of the scheme
 - Changes in accounting practices of the investee company or scheme
 - Impact on valuation of the investments due to aforesaid changes
- The manager shall provide in subscription agreement the timeframe within which the audited financial data of the investee company shall be received for reporting the valuation of the AIFs to performance benchmarking agencies within 6 months.

◆ **Mandatory dematerialisation:**

- All the units of AIFs shall be dematerialised as per the following timelines:

Particulars	Scheme of AIFs with corpus \geq Rs 500 Crore	Scheme of AIFs with corpus $<$ Rs 500 Crore
Dematerialisation of all units issued	On or before 31 st October 2023	On or before 30 th April 2024
Issuance of units only in dematerialised form	On or after 01 st November 2023	On or after 01 st May 2024

- The requirement of dematerialisation shall not be applicable for schemes whose tenure ends on 30th April 2024.

◆ **Other amendments:**

- In order to sell or buy investments from the following persons, the AIF shall obtain consent from atleast 75% of the investors by value in the scheme:
 - Associates
 - Schemes of AIFs managed or sponsored by its Manager, Sponsor or associates of them, or
 - An investor who has committed to invest atleast 50% of the corpus of the scheme
- The manager of the AIFs is required to appoint compliance officer who shall be responsible for monitoring the compliance with the provisions of the Act and shall report any non-compliance to SEBI within 7 working days.


AMENDMENTS FOR INVITS AND REITS (“INVESTMENT FUNDS”)

- ◆ The Investments Funds are required to submit the following reports in the prescribed formats from the FY 23-24 and onwards:

Reports	Timeline	Disclosure
Compliance Report on Governance by Investment Manager (“IM”)	21 days from the end of each quarter	Submit to the stock exchange and should form part of Annual report
	21 days from the end of each financial year on annual basis	
	3 months from the end of each financial year on annual basis	
Annual Secretarial Compliance Report given by practicing company secretary	60 days from the end of each financial year	

- ◆ In order to achieve the minimum public shareholding of 25% by the Investment Funds within 3 years from the date of listing, the following methods are provided subject to specific conditions:

Methods	Specific conditions
Issuance of units to public through offer document	-
OFS of Sponsor / IM units to public through offer document	-
OFS of Sponsor / IM units through the secondary market	-
Rights issue to public	Sponsor / IM shall forgo their entitlement arising from such issue
Bonus issue to public	Sponsor / IM shall forgo their entitlement arising from such issue
Allotment of units under Institutional Placement	-
Sale of Sponsor / IM units in the open market in following ways: (i) Upto 2% of total paid-up unit capital, subject to 5 times average monthly trading volume of units, (or) (ii) Upto 5% of paid-up unit capital during a FY subject to further conditions specified by SEBI	The IM shall atleast 1 day prior to the proposed transfer announce the details to stock exchanges. Further, the IM shall forward the undertaking from the Sponsor to the stock exchanges that they shall not buy units in the open market or shall not subscribe to units of ETFs to which units are transferred, as the case maybe.
Transfer of Sponsor/ IM units to an ETF (maximum 5% of paid-up unit capital)	
Any other method as approved by SEBI	The IM shall make an application to SEBI and SEBI shall communicate its decision within 30 days.



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